

No. 6859

13
United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

RONALD BAXTER,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
District of California, Central Division.

FILED

JUN 1 - 1932

PAUL P. O'BRIEN,
CLERK

No.

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

RONALD BAXTER,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
District of California, Central Division.

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Answer	6
Assignment of Errors.....	72
Bill of Exceptions, Defendant's Engrossed.....	17
Testimony on Behalf of Plaintiff:	
Baxter, Ronald, Direct Examination.....	18
Cross-Examination	21
Orbison, Dr. Thomas J., Direct Examination.....	25
Cross-Examination	33
Redirect Examination	46
Rawlings, William S., Direct Examination.....	17
Testimony on Behalf of Defendant:	
Breuer, Dr. Miles J. (Deposition), Direct Examination	49
Cross-Examination	50
Redirect Examination	51
Cassidy, Arthur J., Direct Examination.....	61
Dwyer, Dr. T. J. (Statement), Direct Examination	54
Leahy, Dr. T. M. (Stipulated).	
Newcomb, E. B., Direct Examination.....	62
Cross-Examination	62
Orr, Dr. W. H. (Deposition), Direct Examination	47
Cross-Examination	48
Rock, J. H., Direct Examination.....	54
Cross-Examination	58
Citation	2

	PAGE
Clerk's Certificate.....	79
Complaint	3
Exhibits:	
Plaintiff's Exhibit 1 (Medical Report).....	64
Judgment	10
Motion for New Trial.....	12
Affidavits in Support Thereof:	
Affidavit of Frank L. Long.....	15
Affidavit of Guy R. White.....	14
Names and Addresses of Attorneys.....	1
Order Allowing Appeal.....	75
Order Denying New Trial.....	16
Order Extending Time to Serve and File Bill of Ex- ceptions and Extending Term.....	65, 66, 68, 69
Petition for Appeal.....	70
Praeceptum for Transcript of Record.....	76
Verdict	9

Names and Addresses of Attorneys.

For Appellant:

SAMUEL W. McNABB, Esq.,
United States Attorney;

CLYDE THOMAS, Esq.,
Assistant United States Attorney;

H. C. VEIT, Esq.,

MADISON L. HILL, Esq.,
Federal Building, Los Angeles, California.

For Appellee:

DAVID SPAULDING, Esq.,
11340 Santa Monica Blvd.,
Postoffice Box 1031,
Sawtelle, California.

UNITED STATES OF AMERICA, SS:

To Ronald Baxter, and to David Spaulding, his attorney.

—GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 4th day of March, A. D. 1932, pursuant to an order allowing appeal filed February, 1932, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action entitled RONALD BAXTER vs. UNITED STATES OF AMERICA, No. 3569-J, wherein the United States of America is defendant and appellant and you are plaintiff and appellee to show cause, if any there be, why the Judgment entered August 1, 1931, and the order denying a new trial entered November 17, 1931, in the said cause mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WM. P. JAMES United States District Judge for the Southern District of California, this 12 day of February, A. D. 1932, and of the Independence of the United States, the one hundred and fifty-sixth.

Wm P James

U. S. District Judge for the Southern District of California.

Received copy this citation February 12, 1932. David Spaulding DH. Atty for Ronald Baxter.

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit United States of America. Appellant vs. Ronald Baxter, Appellee. Citation Filed Feb 12 1932 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF CALIFORNIA. CENTRAL
DIVISION.

RONALD BAXTER,

Plaintiff

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 3569-J
COMPLAINT.

Comes now the plaintiff and for cause of action against the defendant, alleges as follows, to-wit:—

I.

That the plaintiff is a resident of Los Angeles, County of Los Angeles, State of California. That he enlisted for military service in the United States, Army on the 30th day of March, 1918, and was honorably discharged on the 15th day of April, 1919.

II.

That while in the military service of the United States, during the war time period, desiring to be insured against the risks of war, said Ronald Baxter applied for a policy of War Risk Insurance in the sum of Ten Thousand Dollars thereafter there were deducted from his monthly pay certain sums of money as premium for said insurance. That a Certificate of War Risk Insurance was duly issued to him by the terms whereof the defendant agreed to pay said plaintiff, or his estate, the sum of \$57.50 per month in the event he suffered permanent and total disability, but said policy was never delivered to the plaintiff.

III.

That while the said insurance policy was in force, on or about October 22nd, 1918, while engaged in active combat in the Argonne Forest with the American Army plaintiff received the following disabilities, to-wit: Gunshot wound in left wrist, shrapnel wound in lumbar region of back, loss of bone structure from back at the ilium, fracture of the fourth lumbar vertebrae.

IV.

That by reason of the foregoing the plaintiff was discharged, as aforesaid, totally and permanently disabled from gunshot wound in left wrist, shrapnel wound in lumbar region of back, loss of bone structure from back at the ilium, and fracture of the fourth lumbar vertebrae, and plaintiff has been informed and believes, and therefore alleges as true, that he will always be so disabled and never again be able to follow any substantially gainful occupation, by reason whereof he became entitled to receive from the defendant, \$57.50 per month commencing on the 22nd day of October, 1918.

V.

That the plaintiff has made due proof of said total and permanent disabilities to the said defendant and demanded payments of the aforesaid amounts, but the defendant disagreed with plaintiff as to his claim of disability and has wholly failed to pay to the plaintiff the sum of \$57.50 per month, or any part thereof. That at this time the plaintiff is totally and permanently disabled and has been since the date of said injuries.

WHEREFORE, The plaintiff demands judgement against the defendant in the sum of \$57.50 per month from the date of said disabilities, together with interest thereon

at the rate of six per cent. per annum, from the several dates same became due and payable, and for his costs and disbursements herein incurred.

David Spaulding

Attorney for Plaintiff.

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

RONALD BAXTER, being first duly sworn, on oath deposes and says: That he is the plaintiff in the above-entitled action: That he has read the foregoing Complaint, knows the contents thereof, and believes the same to be true.

Ronald Baxter

Subscribed and sworn to before me this 3rd day of June, 1929

[Seal]

J. H. Wixom

Notary Public in and for the said County and State.

[Endorsed]: No. 3569-J Dept. In the United States District Court Southern District of California Central Division Ronald Baxter, Plaintiff vs. United States of America, Defendant Complaint Filed Jun 6—1929 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk David Spaulding 11340 Santa Monica Blvd, Sawtelle Mailing Address: P. O. Box 1031, Sawtelle, Calif. Attorney for Plaintiff

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION.

RONALD BAXTER,)	
)	
	)	Plaintiff,
)	
-vs-	)	No. 3569-J
	)	ANSWER
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

COMES NOW the United States of America, defendant in the above entitled cause, by its attorneys, Samuel W. McNabb, United States Attorney for the Southern District of California, Sharpless Walker, Assistant United States Attorney for said District, and R: M. Chenoweth, of counsel, and answering plaintiff's complaint, admits, denies and alleges:

I.

Answering Paragraph I of plaintiff's complaint, defendant admits that plaintiff enlisted in the United States Army on March 30th, 1918 and that he was honorably discharged therefrom on April 15th, 1919. Defendant alleges that it has no information or belief on the remaining allegations in said paragraph sufficient to enable it to answer and, on that ground, denies each and every allegation in said paragraph not herein specifically admitted to be true.

II.

Answering Paragraph II of plaintiff's complaint, defendant admits that on April 8th, 1918 plaintiff applied

for and was granted a policy of War Risk Term Insurance in the amount of Ten Thousand Dollars (\$10,000.00), and that the premiums on the aforesaid insurance were deducted from plaintiff's monthly pay while in the military service. Defendant alleges that said insurance was payable in monthly payments of Fifty-Seven and 50/100 Dollars (\$57.50) each, only in the event plaintiff suffered permanent and total disability while said insurance was in force and effect, and that plaintiff permitted said insurance policy to lapse for non-payment of premium due thereon on July 1st, 1919. Defendant denies each and every allegation in said paragraph not herein specifically admitted to be true.

III.

Answering Paragraph III of plaintiff's complaint, defendant denies each and every allegation contained therein.

IV.

Answering Paragraph IV of plaintiff's complaint, defendant denies each and every allegation contained therein.

V.

Answering Paragraph V of plaintiff's complaint, defendant admits that the defendant disagreed with plaintiff and has wholly failed to pay to plaintiff the sum of Fifty-Seven and 50/100 Dollars (\$57.50) per month or any part thereof. Defendant denies each and every allegation in said paragraph not herein specifically admitted to be true.

WHEREFORE, defendant, United States of America, prays that plaintiff take nothing by this action; that plaintiff's complaint be dismissed; that judgment be rendered in favor of defendant for costs incurred herein, and for such

other and further relief as may be meet and just in the premises.

Samuel W. McNabb

SAMUEL M. McNABB

United States Attorney.

Sharpless Walker

SHARPLESS WALKER

Assistant United States Attorney.

R. M. Chenoweth

R. M. CHENOWETH

Of Counsel.

UNITED STATES OF AMERICA)

: ss.

Southern District of California)

SHARPLESS WALKER, being first duly sworn, deposes and says: that he is an Assistant to the United States Attorney for the Southern District of California, and one of the attorneys for the defendant in the within entitled action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are herein stated on his information or belief, and as to those matters that he believes it to be true.

That the reason why this verification is made by deponent and not by the defendant is that the defendant is a corporation sovereign.

That the sources of deponent's information and the grounds of his belief are records, files and papers furnished by the United States Veterans' Bureau and official communications received from the Attorney General of the United States.

Sharpless Walker

SHARPLESS WALKER

SUBSCRIBED and SWORN to before me this 30 day of October, 1929.

R. S. ZIMMERMAN,
Clerk U. S. District Court, Southern District of California.

[Seal]

By B. B. Hansen

Deputy.

[Endorsed]: No. 3569-J In the District Court of the United States in and for the Southern District of California Central Division Ronald Baxter, Plaintiff, -vs- United States of America, Defendant. Motion to Strike Received copy of within Answer this 30th day of October, 1929 David Spaulding D H Attorney for Plaintiff Filed Oct 30 1929 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

Ronald Baxter,	Plaintiff,)	No. 3569-J- Law. VERDICT.
)	
Vs.)	
)	
United States of America,	Defendant.)	

We, the Jury in the above-entitled cause, find for the Plaintiff, Ronald Baxter, and fix the date of his total and permanent disability from following continuously any substantially gainful occupation from the 22nd day of October 1918

Los Angeles, California, July 21st, 1931.

R. B. Barr
FOREMAN OF THE JURY.

[Endorsed]: Filed Jul 21 1931 R. S. Zimmerman, Clerk By Murray E Wire Deputy Clerk

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF CALIFORNIA CENTRAL
DIVISION

RONALD BAXTER,)	
)	
	)	Plaintiff,
)	
vs.	)	No. 3569-J
	)	JUDGMENT
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

The above entitled cause having come duly on for trial on the 21st day of July, 1931, before the Honorable William P. James, one of the Judges of the above entitled Court; plaintiff appearing in person and by his attorney, David Spaulding; defendant, United States of America, appearing by Samuel W. McNabb, United States Attorney, Clyde Thomas, Assistant United States Attorney, and H. C. Veit, Regional Attorney for the United States Veterans Bureau; a jury having been duly empaneled and sworn to try said cause; and evidence having been introduced by the plaintiff and by the defendant; the attorneys for plaintiff and defendant having duly made their arguments, and the Court having instructed the jury as to the law, and the jury having duly considered the evidence and the Court's instructions did on the 21st day of July, 1931, return a verdict in favor of the plaintiff as follows: "We, the jury in the above entitled cause, find for the plaintiff, Ronald Baxter, and fix the date of his total and permanent disability from following continuously any substantially gainful occupation from October 22, 1918," and in consequence thereof entitled to receive from the defendant

the sum of \$57.50 per month commencing on the 22nd day of October, 1918.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff recover from the defendant benefits in accordance with the terms of his said War Risk Insurance policy at the rate of \$57.50 per month commencing on the 22nd day of October, 1918.

IT IS FURTHER ORDERED that David Spaulding is entitled to receive from said Judgment, as a reasonable attorney's fee for his services as attorney in the above entitled cause, ten per cent of the amount of any and all monies due plaintiff in accordance herewith, and that he is entitled to receive a further sum of ten per cent of each and every payment, other than the said sum found to be due hereunder, hereinafter made by the defendant to the plaintiff, his heirs, executors, and assigns, in consequence of, or as the result of, the entry of this Judgment, said payments, however, to be made as by law in such cases provided.

DONE IN OPEN COURT this 1 day of August, 1931.

Wm P James

UNITED STATES DISTRICT JUDGE

Approved as to form, as provided in rule 44.

Clyde Thomas

Assistant U. S. Attorney

Judgment entered and recorded Aug 1 1931 R. S. Zimmerman Clerk. By Murray E. Wire, Deputy Clerk.

[Endorsed]: No. 3569 Dept. J United States District Court Southern District of California Central Division Ronald Baxter Plaintiff vs. United States of

America Defendant Judgment Filed Aug 1 1931 R. S.
 Zimmerman, Clerk. By Murray E. Wire Deputy Clerk
 David Spaulding Attorney at Law P. O. Box 581 West
 Los Angeles, Calif. Attorney for Plaintiff

IN THE DISTRICT COURT OF THE UNITED
 STATES FOR THE SOUTHERN DISTRICT OF
 CALIFORNIA CENTRAL DIVISION.

RONALD BAXTER,)	
)	
Plaintiff,)	
)	
vs.	)	Law No. 3569-J.
)	
UNITED STATES,)	
)	
Defendant.)	

MOTION FOR NEW TRIAL.

Now comes the defendant and moves this Court for an Order Setting Aside the Verdict and Judgment herein and Granting a New Trial of the above entitled cause for the following reasons, namely:

(1) The Court erred in not sustaining defendant's objection to the introduction of testimony which was immaterial and irrelevant and not within the issues to be tried.

(2) The Court erred in not sustaining defendant's objection to incompetent and irrelevant testimony and not within the issues to be tried in that by the Court's ruling plaintiff was permitted to submit testimony at variance with the allegations of his complaint.

(3) The Court erred in not sustaining defendant's objection to the introduction of incompetent and irrelevant

testimony and not within the issues to be tried in that the defendant was taken by surprise and was not prepared to submit testimony in rebuttal thereto.

(4) The Court erred in refusing to direct a verdict for the defendant in that the testimony adduced by the plaintiff on trial was incompetent and irrelevant and not within the issues to be tried and without such evidence was insufficient to support a verdict for the plaintiff.

(5) Error in law occurring on trial of said cause in that the verdict was contrary to law.

This motion will be based upon the attached affidavits supported by points and authorities pertaining to the questions involved.

S W McNabb
SAMUEL W. McNABB,
United States Attorney.

Clyde Thomas
CLYDE THOMAS,
Assistant United States Attorney.

H C Veit
HENRY C. VEIT
and

Ernest D. Fooks
ERNEST D. FOOKS,
Of Counsel.

Attorneys for Defendant.

Dated this 28th day of October, 1931.

Re Baxter, Ronald

AFFIDAVIT

I, Guy R. White, after first having had explained to me the meaning of Section 25 of the War Risk Insurance Act, and Paragraph 2 of Section 14 of the Act of August 9th, 1921, which respectively provided penalties for making any statement of a material fact knowing it to be false, and knowingly making a false and *fraudulent* affidavit or other writing, in connection with any claim for family allowance, compensation or insurance, was duly sworn, and on my oath, depose and say:

That, I am Captain of Company 8, Domiciliary Bks, National Soldiers Home—that Ronald Baxter has been Sergeant of the Company for the past eight months; that we are in daily contact; that while during that time I have noticed that his physical condition was not first class, I have never noticed any indication of any mental trouble, nervousness, excitability; that he seems to be level headed and diplomatic when the occasion calls for diplomacy; that he occasionally shows a physical nervous condition after having done extra work or exertion—but that this does not seem to arise from any mental condition.

Guy R White

Affiant

Subscribed and sworn to before me this 6th day of August 1921

William S Rawlings

FIELD EXAMINER, U. S. Veterans' Bureau

LEG (Inv) #14

I, Frank L. Long, being first duly sworn, depose and say:

That I am a specialist in mental and nervous diseases, on the staff of the Veterans Administration; that I am Chief of the Neuropsychiatric Unit of the Veterans Administration, Los Angeles, California.

That I have carefully examined all of the medical records and reports of examinations made by both government doctors and doctors in private practice, in connection with the files and records of Ronald Baxter now on file with the Veterans Administration; that the first report of examination was made April 26, 1919, and the last examination was made October 12, 1931, with frequent re-examinations appearing in between these dates; that in all of these examinations I have carefully read the history and complaints and subjective symptoms given by Ronald Baxter to the examining physician on the date of each examination, and I do not find any complaint of a mental or nervous disability, and further I do not find as the result of these several examinations, any evidences or indication whatsoever of a mental or nervous disability; that the last examination made October 12, 1931, by a board of three medical experts, shows no symptoms, subjective or objective, nor discloses any history of a mental or nervous disability.

Further affiant sayeth not.

Frank L Long M. D.

FRANK L. LONG, M. D.

Subscribed and sworn to before me this 20 day of October 1931.

[Seal]

J. T. Graham

Notary Public

My Commission Expires Jan. 24, 1935

[Endorsed]: No. 3569-J In the District Court of the United States for the Southern District of California, Central Division. Ronald Baxter, Plaintiff, vs. United States, Defendant. Motion for new trial. Filed Oct 28 1931 R. S. Zimmerman, Clerk By C A Simmons Deputy Clerk



At a stated term, to wit: The Sept. Term, A. D. 1931, of the District Court of the United States of America, within and for the Cent. Division of the Southern District of California, held at the court room thereof in the City of L. A. on Tues. the 17th day of November, in the year of our Lord one thousand nine hundred and thirty-one.

PRESENT: THE HONORABLE WM. P. JAMES District Judge.

Ronald Baxter,	Plaintiff,)	
)	
vs.		)	No. 3569-Civil
)	
United States of America,)	
	Defendant,)	

The motion of the defendant for a new trial herein is denied.

(Testimony of William S. Rawlings)

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

RONALD BAXTER,)
Plaintiff,)
vs.)
UNITED STATES OF AMERICA,) No. 3569-J
Defendant.)

DEFENDANT'S ENGROSSED BILL OF EXCEPTIONS

Be it remembered that the above entitled cause came on regularly for trial on the 21st day of July, 1931, before the Honorable Wm. P. James, one of the judges of the above entitled court, plaintiff appearing in person and by his attorney, David Spaulding, defendant, United States of America, appearing by Samuel W. McNabb, United States Attorney, Clyde Thomas, Assistant United States Attorney, and H. C. Veit, Regional Attorney for the United States Veterans Bureau, of counsel, a jury having been duly impaneled and sworn to try said cause;

WHEREUPON, the following proceedings took place:

It was stipulated that plaintiff's War Risk Insurance Policy was in force including the grace period to the 1st day of August, 1919.

WILLIAM S. RAWLINGS,

the witness in behalf of the plaintiff, after being first duly sworn, testified as follows:

My name is William S. Rawlings. I am Field Examiner of the United States Veterans Bureau in which capacity I have control and custody of the records of

(Testimony of Ronald Baxter)

various pensioners of the United States Veterans Bureau. I have custody of the records of this plaintiff, Ronald Baxter, which records pertain both to compensation and insurance. The Adjutant General's Report shows concerning Ronald Baxter at the time of his discharge as follows:

"That he has a wound, nature and location of which are as follows:

"Shrapnel (1) Scar 10 inches long oblique through lower Lumbar and Sacral region fracturing spine at 5th Lumbar Vertebrae and crest of left Ilium. (2) Superficial Scar Posterior surface of wrist left. In line of duty. Disability 30%. Maximum Improvement Attained.

"The wound, injury, or disease is likely to result in death or disability.

"In my opinion the wound, injury, or disease did originate in the line of duty in the service of the United States.

"In view of occupation, he is 30 per cent disabled."

RONALD BAXTER,

plaintiff, was then called and after being duly sworn, testified as follows:

I have been a resident of Los Angeles County for about eight years. I now live at the National Home at Sawtelle. On the 22nd day of October, 1918, I was with my regiment in the Argonne Forest. We were under heavy shell fire and I received a shrapnel injury to the wrist. A few minutes later I was injured in the spine by shrapnel which almost cut me in half and paralyzed me from the

(Testimony of Ronald Baxter)

waist down for several months and put me in the hospital for months. I lost considerable blood from the wound owing to the fact that I was left in the field until stretcher bearers picked me up. I served in the St. Mihiel Drive and in the Argonne Forest. I remained in the hospital from the date of my injury until I was discharged in April, 1919. I was unable to move out of bed for at least nine or ten weeks. At that time I could not move my legs. I suffered considerable pain and discomfort across the back. I had pains in the back of my head. I was bothered with stomach trouble. I was unable to pass urine without aid. After my discharge from the service, I went to Omaha, Nebraska. Before going into service, I had done ranch and similar work on a cattle ranch which was steady prior to the time I entered the service. After returning home, I secured a job as night watchman with which I remained for about two months. Part of the duties required that I handle heavy oxygen drums and I could not handle them because the strain on my back was too great and I suffered from physical exhaustion. I suffered from back pains and leg pains. My official capacity there was night watchman. At that job I earned \$22.00 a week. I then accepted vocational training under the Veterans Bureau. They sent me to Lincoln, Nebraska, to take an agricultural course which I took for two semesters and then I was taken out of the agricultural course and given a music course which I took for two or three years. I was taken out of music by the Bureau and put into a business course and put into a salesmanship course and then finally declared as unfeasible for further training and dropped it. I had difficulty concen-

(Testimony of Ronald Baxter)

trating on my studies; the result was that I did not give the progress that the Bureau required, and so I was taken out of the training for that reason. I was of an extremely nervous nature, and could not bring my mind to bear on the studies for any length of time and had difficulty getting rest at night because of injuries that I received in service. These same things held for the other studies, the other objectives that I took up. I sought employment. I got a job with the Dixon Book Company for about two weeks. That is I could only carry on the work for about two weeks; selling books required walking considerably and I could not stand on my feet or I could not walk any great distance, and consequently I had to give it up after two weeks. Upon the completion of my training I sought employment with the Goodyear Tire and Rubber Company in Los Angeles, and also with the telephone company. I was subjected to a physical examination by both companies and turned down. I then sought a job as stock salesman for the Shore Investment Company on a purely commission basis, and that required walking considerably on the hard pavements and I could not maintain the pace so I had to give it up. I experienced considerable difficulty and discomfort at all times, especially when I am on my feet or walking. The discomfort is across the small of the back where I was injured by the shrapnel and in the left hip. The left leg also is extremely weak at times. I have difficulty getting required rest at night because of the pains and still have difficulty with my kidneys and am bothered with stomach trouble ever since discharge in the assimilation of food. The conditions I have described continue up to the present time. I have pain in my shoul-

(Testimony of Ronald Baxter)

ders, in the back of my head at all times. I used to use a brace but I have dispensed with it to some extent but cannot now hold my body up easily. I am a sergeant of a company at the Soldiers' Home at Sawtelle. The duties are taking care of picking up laundry and distributing laundry, and property, company property, to the men, and looking after the company generally. The actual work amounts to about an hour a day. I was not required to work continuously. The duties did not require it. I could do all the work there was to do in less than an hour, and then I was free to do as I pleased from then on, as long as I stayed around the company. At first, my salary was \$28.00 a month which has since been increased and I now get \$40.00 a month.

CROSS EXAMINATION

BY MR. THOMAS:

Q When did you go into the Home, did you say, Mr. Baxter?

A 1924.

Q Is that a hospital?

A Well, there is a hospital there, but the barracks is where I went.

Q Just a place to live?

A A place to stay, yes.

Q A place to stay. Does it cost you anything?

A Costs me anything?

Q Do you have to pay for board and room?

A No.

Q What did you do to earn a living previous to going into the hospital?

A Previous to going into the service, do you mean?

(Testimony of Ronald Baxter)

Q No, previous to going to the Soldiers' Home to live, that is what I meant to say.

A I was under the Veterans' Bureau, Vocational Bureau.

Q And that supplied you your living, you mean?

A Yes, that supplied money to pay it.

Q And that was true at all times from the time you left the service?

A Yes, that was true.

Q And it is still true? Do you still get compensation from there?

A Not vocational.

MR. SPAULDING: I object, if the Court please, as not material.

A Got compensation, but not vocational pay.

MR. SPAULDING: It is immaterial in this action, if the Court please.

THE COURT: It is immaterial except showing and bearing on the question of his having had work or not, as to how he supported himself. The matter of whether a man receives compensation has no bearing on the question as to whether he is entitled to insurance.

MR. THOMAS: It was only asked for the purpose of showing employment.

THE COURT: I understand.

Q BY MR. THOMAS: Did you go to work at the Soldiers' Home shortly after moving there to live?

A Yes, right after moving there.

Q What was your job at that time?

A Elevator operator.

(Testimony of Ronald Baxter)

Q Elevator operator. How long did you continue at that job?

A I should say, three or four years.

Q Three or four years. Were you janitor part of the time?

A Well, it was classified more or less as janitor.

Q And were paid for that work?

A \$24 a month.

Q \$24 a month?

A Yes, sir.

Q Now, previous to going to the Soldiers' Home to live, did you say you did some work other than in vocational training?

A Other than vocational training.

Q What work did you do?

A I attempted to sell stock for the Shore Investment Company, also worked two months for the Belcher Company, Omaha; I worked for an oxygen company in Omaha two months; the Dixon Book Company, Lincoln, Nebraska, for about two weeks, and for the Shore Investment Company, Los Angeles, for about two weeks.

Q. And that is the entire work that you did except during vocational training?

A With the exception of vocational training, that is all.

Q How long did you say you had on the agricultural course in vocational training?

A About two semesters, as I remember.

Q That is how long?

A Something like three or four months. I am not sure.

(Testimony of Ronald Baxter)

Q A semester is three or four months?

A I am not sure now just how long. I don't remember.

Q What was that work? What work did you do on that course?

A Studied chemistry and physics, farm motors and dairying.

Q Did you do any actual farm work in the course?

A No.

Q What did you do previous to going into the army?

A I did mostly farm work, ranch work.

Q Where?

A Yes.

Q Where did you live?

A I lived on the farm.

Q But, whereabouts in the country, what state and city and town?

A In different states; in Kansas and Texas.

Q How old were you when you enlisted?

A I was 25.

Q You testified a minute ago that you worked from the time you left school until you entered the army, is that correct?

A Yes.

Q When did you leave school?

A When I was about 14.

Q When you were 14?

A Yes, sir.

Q What school were you in?

A I received my education in New Zealand

Q In New Zealand?

A Yes, sir.

(Testimony of Dr. Thomas J. Orbison)

Q What place were you working when you enlisted in the army?

A When I enlisted in the army I was working for the Alvarado Dairy Company of Omaha.

Q And that had been your home how long?

A I don't recollect just how long; several months.

Q How long had you been on that job, would you say?

A I had been on that job about two or three months, I think; I am not sure.

Q Not for a long period of time, though?

A No.

Q Where had you been previous to that?

A I had worked for Reed Brothers, as commissary clerk.

Q Whereabouts?

A On Leavenworth Street, Omaha.

Q How long had you lived in Omaha?

A Oh, I suppose about 18 months; I am not sure.

MR. SPAULDING: Speak up, please, Mr. Baxter.

A About 18 months; I am not sure exactly.

Q BY MR. THOMAS: How many jobs had you had while you were there?

A Those two.

Q Those two?

A Yes.

DR. THOMAS J. ORBISON,

the witness in behalf of the plaintiff, after being first duly sworn, testified as follows:

My name is Thomas J. Orbison. I am a physician and surgeon. My practice is entirely limited and has been for over twenty years, to mental and nervous diseases.

(Testimony of Dr. Thomas J. Orbison)

I was graduated at the University of Pennsylvania Medical School, 1898, with degrees of Doctor of Medicine and Doctor of Medical Jurisprudence, and I went into the—took my internship the next year. I did not start practice right away because I went right into the Spanish American War, not as a doctor, however, but as a private in a cavalry troop. The next year, took two years internship at the Pennsylvania Hospital in Philadelphia. Later on, I was connected with the University of Pennsylvania in a teaching capacity as assistant instructor in mental and nervous diseases there; and also, by the Polyclinic Hospital in Philadelphia, that is, teaching and hospital assistant at the Orthopedic Hospital, that is, in the department of mental and nervous diseases of that hospital. At those three hospitals, I suppose I approximated two and three hundred cases every month, I saw at various times in mental and nervous diseases, then coming out here in 1907. Since that time, in 1912, I became a member of the Lunacy Commission of Los Angeles County, have been there ever since, assistant of Neurological—Neuro-Psychiatric, it is called. That means mental and nervous diseases department out here at the General Hospital, the old County Hospital, now called the General Hospital. Then, I was in the same capacity at the children's—in the same capacity at the Santa Rita Clinic of the Catholic Hospital Bureau; in the same capacity out at Whittier's Day School. As long as Fred Mellus was alive, three years, I have been expert medical examiner for the State Industrial Accident Insurance Commission. It has been in that capacity I have seen most of my traumatic injuries, severe traumatic injuries, except during the time

(Testimony of Dr. Thomas J. Orbison)

I was in the army. I was overseas, but not very far, by the way, from one of the hospitals where this man was after he got back from the front. I was in the hospital organization not very far from him, and later on I was up in Russia for a time. I had a personal experience there with high explosives. The shell entered my office just above my head and exploded there. I know a little bit, from personal experience, what it is to have some nervous trouble following the concussion of a high explosive shell. Today I can't walk more than a couple of blocks at this time, although I hope to.

Q Are you through—pardon me?

A That is all I can say.

Q Will you tell the jury, just describe the spine and its connection with the nervous system, that is, just what portion or what the spine does.

A Well, to be as brief as possible, if you have ever seen a skinned eel, you will know just about what the spinal cord looks like as it lays there in the bony canal, called the bony spine. It lies in, right from the vertebra, right down about that far from the end of the bony canal (illustrating). Now, as it lies in there, from the side, coming off from both sides you see nerves. If you cut that spinal cord across, you will see sort of an H-shaped thing rather—I can show you in a picture easily enough—but rather an H-shaped thing, all different colors, the H being rather gray, called “the gray matter of the cord,” and with surrounding tissue being white, called “the white matter of the cord.” Now that gray matter is all composed of cells. Under the microscope you can see those cells. From the anterior portion, that is, from the front

(Testimony of Dr. Thomas J. Orbison)

toward this way (illustrating), come out the motor nerves; and those branching out from the posterior side are the sensory portions. Now, of course, motion comes from those out, and the sensory come from outside in. Now, just immediately almost after those branches have come out from that eel-like looking structure, they join a little knob there called the ganglia, and then they go out and go to their respective muscles and tissues. Now, the very important thing, that is what we call the sensory motor side—motion and sensation—but, right alongside of that bony spine there is a very important nervous system, what we call the “vegetative nervous system.” It looks like a chain, chain or knob-like little keys joined by a slender material. That is what is called “the sympathetic nervous system.” We speak of it as the vegetative nervous system. Now, that is very, very—hugs the spine all the way up, and that is very intimately connected with the emotional side of us. It also goes to all the smooth muscles of the body. Those smooth muscles are all the muscles of the heart, all the muscles of the arteries, all the internal glands, all the smooth muscles of the intestines, so it is very important. So, that is in general—I mean in brief—what the picture of the nervous system is.

Q And the spine and the brain are connected, isn't that true?

A Oh, yes, of course the spinal cord connects immediately up through the medulla oblongata.

Q Now, Doctor, did you at my request in this case, make an examination of the plaintiff's back?

A Yes.

Q When did you make that examination?

(Testimony of Dr. Thomas J. Orbison)

A (After producing memorandum.) I made that examination under July 2nd. I spent, I suppose, two and a half—two hours or two and a half hours making that examination on July 2nd, 1931.

Q And will you just state to the jury your conclusions, from your viewpoint as a psychiatrist and physician, as to the plaintiff's physical condition, that is, as to what he has subjective and your diagnosis of that?

(At this point, defendant objected to any evidence of disability because of mental and nervous diseases which objection was overruled and exception allowed.)

A You get a much clearer idea by seeing what it looks like. (Demonstrating on plaintiff's body.) Now, you see for yourself where that wound is. Now, when that was fresh it was pretty bad and when he was examined first, of course he was brought in and, naturally, would be on his belly, because you would not put him on his back, and I saw the examination made just shortly after he was wounded, but they found no—as they call it—no cord injuries. What they meant by that, evidently, was because they could not possible have the time or the ability to make a thorough neurological. They found probably there was some stiffness of the legs and feet; in other words, there was not a flaccid paralysis, and I think what they said was entirely right. In other words, they did not find that this spine or cord had been severed. I think they were entirely right in that. Now, just above here—stand up straight—pull that up, will you? The cord comes down on the inside (indicating). * * * I am kind of ambi-dextrous, anyhow. That is the spinal cord coming down and spaced inside the bony canal. I will say this for the bony canal:

(Testimony of Dr. Thomas J. Orbison)

That is on the front side, anterior side. The bone down there or vertebra would be pretty near that thick (indicating), whereas, the bone at the peak would be only about that thick, so if he were shot at the back—of course, this has all been worked out very well physiologically in *in* laboratories, the effect of shock on the spinal cord by trauma. Naturally, there is not a very big space, not much between the shock and the cord at his back compared with what it is in the front. Well, the cord runs down there and the nerves come off to the side down here—I am sorry, he is very—his skin is very irritable, but I have to do this to show you. That is all hidden by this bone down in through here. These nerves that come down here that move the legs, the sciatic nerves and the motor nerves to the legs come down the inside and then come out. Now, if you will notice, anything below that area of shock is going to be affected. I mean, that is as plain as the nose on your face. You can't get away from it. What you would see if you would look inside there would be probably a shrunken cord and little areas in little ridges of hemorrhagic—we call them pin-point or shotgun hemorrhages that take place there after a severe shock of this kind when a man is shot with high explosive. I can't tell you the amount of force used because I don't know, but it is worse than the kick of a mule. So, what happened to him after this, of course, this big jagged wound was there; they dressed it, and what happened to him—I think that is all.

(Plaintiff replacing his clothes.)

A (Continuing.) —he could not make voluntary use of his legs although, I venture to say, that the legs them-

(Testimony of Dr. Thomas J. Orbison)

selves were rather stiff than flaccid. Now, if the cord had been cut across, in other words, if there had been a complete severance there, he never could have used those legs at all; they would have been flaccid. You see the difference, it was the shock and not a complete severance of the cord.

Q Now, Doctor, what is your diagnosis concerning this injury?

A What?

Q Your diagnosis, will you give it to the jury?

A My diagnosis is as follows, and it is corroborated by both the history and my physical findings—

MR. THOMAS: Just a minute, Doctor. Doctor, just a minute. We do not want the corroboration. He asked you for your diagnosis.

A Yes.

Q BY MR. SPAULDING: Just give your diagnosis.

A All right; I beg your pardon. Gunshot wound in the lower dorsal region, the lower back, with concussion of the spinal cord consequently or sequentially. That is what followed. What followed that, psychoneurosis. What is the type of the psychoneurosis? That is the neurasthenic type. That is my diagnosis.

Q Now, Doctor, considering in this case the definition of a total disability is any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation, in your opinion, is this man so totally disabled at this time?

A There is no question about it; he is.

Q Considering the same definition—

(Testimony of Dr. Thomas J. Orbison)

A (Continuing.) That is, there is no question in my mind.

Q Yes, that is what I mean. Considering the same question, Doctor, and assuming that on the 22nd day of October, 1918, this man was injured by a shell as you have seen and described—

A Well, it is shrapnel, as I understand, and not a shell.

Q Yes. Well, assuming that he was so injured, assuming that the diagnosis at that time showed this scar and a fracture of the fifth lumbar vertebrae, and assuming since that time—now, with those facts there, what would your opinion be as to his total disability on the date of his injury, considering the same definition?

A He was totally disabled, that is all.

Q Considering that, Doctor, that since that time he has experienced pains in his legs, in his stomach and his kidneys, considering that those conditions have continued to the present, in your opinion, has he been totally disabled as used in that definition since the 22nd day of October to the present date?

A Oh, yes. He may have—by “totally disabled,” he may have been able for a little short time, a few days, maybe a week or so, to make good.

Q In your opinion, Doctor, were these impairments at the time of their inception based on conditions which rendered them reasonably certain to remain with him throughout his lifetime?

A Oh, yes.

MR. SPAULDING: That is all, Doctor. You may cross-examine.

(Testimony of Dr. Thomas J. Orbison)

CROSS EXAMINATION

BY MR. THOMAS:

Q Will he ever get any better, Doctor?

A A little louder, please.

Q Will Mr. Baxter ever improve, that wound, the result of it?

A The spinal cord will never improve. I can't say whether the psychoneurosis will improve or not. It lasted for quite a while. Look at him. He is six feet and several inches tall, weighs 137 with his clothes on. I would not be surprised if he had tuberculosis. I don't know that, but I mean it would not surprise me a bit. I am not saying that for effect, mind you.

Q Just answer the question.

A I did.

Q Just a minute, Doctor.

A Yes.

Q Will you answer the question and nothing else, please? What are your specialties as a doctor?

A Mental and nervous diseases.

Q How long have you been practicing them.

A Over 23 or 24 years; my practice has been entirely limited to that for 23, 24 years.

Q Where?

A Here in Los Angeles.

Q In Los Angeles?

A I mean in California.

* * * *

Q Have you ever doctored a back injury?

A Have I ever what?

Q Doctored a patient with a back injury.

(Testimony of Dr. Thomas J. Orbison)

A Well, I should say so.

Q Such as this one?

A That is pretty hard to say exactly. No, not just exactly like this, if you mean that by such—I will give you an instance of—

Q. I don't want that.

A You don't. You ask me questions, but you don't want the answers, don't you see? I mean, apparently that is the way it looks to me.

Q Well, when I said "like this one," I didn't mean in every detail, Doctor. I mean where the back was damaged by a gunshot wound or a fracture of any kind.

A Oh, yes, I have seen quite a number of them. I won't say that I have treated. I have made the examinations of them. In regard to that, I am not a bone man; I would refer that kind of a case, as far as the treatment, to a man that was a specialist in diseases of the bone. As regards his nervous condition, however—

Q I don't want that, Doctor.

A I would treat that.

* * * *

Q BY MR. THOMAS: Now, did you ever see this man previous to the date you examined him, July 2nd—is that the date you have testified?

A No, as I say, that is the first time I saw him. I saw him about two hours, two and a half hours at that date.

Q Did I understand your testimony here, that the spinal cord was not severed?

A Yes.

Q Which vertebra was injured?

(Testimony of Dr. Thomas J. Orbison)

A I think probably a number of the vertebrae at the lower part of the dorsal region and the lumbar region were injured.

A The fact is, the injury to the vertebrae is rather minor, as compared with the injury to the cord, you understand. I do not think that there was much damage to the vertebrae themselves, that is, I do not think that they were torn, so the history shows that the fifth, I think it was, that was broken—I am judging by the outside appearances, what I see there, and if that man was deaf and dumb and couldn't tell me a word, it would be easy for me to answer those questions.

Q Do you know which vertebra was injured? I don't care what you—

A (Interrupting.) I think it was the fifth one was said to be injured.

Q I don't want what was said. I asked you if you knew, of your own knowledge.

A Oh, no, certainly not. I didn't see it. I didn't even see the X-rays.

Q Did you take one when you examined this man?

A Certainly not; no, no. That was not necessary; it was not up to me to do that at all. I was there to give my opinion as to the result of that injury upon his nervous system, and not the result of the injury upon his bones at all, although I am not a specialist in bone injuries.

Q Then, your results are given and your diagnosis was made on what was told you, is that correct?

A No, certainly not. I tried to tell you that if that man had not told me a word and I, having made my examination, I could have made a pretty fair neurological

(Testimony of Dr. Thomas J. Orbison)

diagnosis. However, it would require—I will go farther, and say that I would want more than that to know, so as to enable me to make a diagnosis upon psychoneurosis. Does that answer your question?

Q Do you know, outside of what was told you, any more about that than what you can see and just showed the jury? .

A Now, if you will just connect a little closer and tell me just what you mean by that. I want to answer your questions exactly as you want me to.

Q I understood you to say just now Doctor, that you have made your diagnosis on what you knew?

A Upon what I saw and what he told me.

Q All right.

A Yes.

Q Now, eliminating what he told you—

A Yes.

Q —can you make a diagnosis?

A I can make a neurological diagnosis, yes.

Q What is that?

A Concussion of the spinal cord at about the level of the lower dorsal vertebrae, beginning up around in that general neighborhood (indicating); and that means that the level is there but a concussion extends both ways, so the area of concussion is more extensive than the area of the injury. Do you understand?

Q Yes.

A Yes.

Q All right. Now, how do you know that that took place in him, that that concussion was there, if you eliminate what he told you?

(Testimony of Dr. Thomas J. Orbison)

A How do I know that what?

Q That there was any concussion?

A All right. I see a jagged wound, long and wide at a certain level at the present time, the scar of it is at the lower level of the spine. I naturally would not know that that was done by shrapnel unless I had been told. It could have been done by some jagged instrument. If it had been done by a jagged instrument like a saw bayonet, for example, he would not have been, in my opinion—of course, he would not have symptoms of organic lesion of the cord, do you see? Now, wait a minute. And so I came to the conclusion that what had caused that, especially as he had on his other parts of his body evidences of a wound, I came to the conclusion that he had been shot, and that that was the nature of the original injury; and, because I find at the present time evidences of organic lesion remaining in the spinal cord, I came to the conclusion that whatever it was that caused that original injury, caused an injury to the spinal cord, not the spinal column necessarily at all, but to the spinal cord, that is. I mean, without doubt, that is to my mind what I found by objective symptoms.

Q Now, I don't remember your answer, but after getting this additional information, if you answered it, I want to ask you again: Is he liable to get worse, or will it get better, from your experience as a doctor?

A You ask me a very hard question. I can't say that I can give an explicit answer. I would only say this, that my opinion is, that don't get better, that is all. It has been going on for a long time, which leads—well, you don't want any more, I suppose?

(Testimony of Dr. Thomas J. Orbison)

Q What?

A What?

Q I didn't hear you, was all. Will it likely get injured and become worse from injury in any way?

A Pardon me?

Q Is it so that it might easily become hurt further?

A Hurt?

Q No, I don't mean painful; I mean, is that condition in the cord liable to become worse from anything that he might do?

A Do you mean the organic lesion in his cord?

Q Yes.

A No, I think it is the other way around; it will prevent him from doing, rather than be injured by what he does. Of course, he might fall down and break his back and hurt it over again, but I mean the ordinary, rather than extraordinary.

Q Ordinary conduct of affairs?

A I don't believe he can do enough to hurt himself.

Q Will his effort to do something hurt him?

A What?

Q Would an effort on his part to do something hurt him? I mean, hurt his cord and make it worse? I don't mean to make that painful.

A Hurt his cord?

Q Yes.

A Oh, no, I don't think so. No, no, I don't think so. In fact, I think that he ought to do just as much as he can physically, whatever he can do. He can't do—he couldn't do—he shouldn't do a heavy day's work. He might one day.

(Testimony of Dr. Thomas J. Orbison)

Q If he did light work, Doctor, would his cord get worse?

A You say if what?

Q If he did light work every day, would the condition of that cord get worse?

A No, I don't think so.

MR. SPAULDING: What was his answer?

MR. THOMAS: "No, I don't think so."

Q Do you think he could handle a job at running an elevator without hurting himself?

A Put it this way: I would not hire him.

Q That is not what I asked you, Doctor.

A Pardon me.

Q That was not what I asked you.

A All right; put it the other way: No, I don't think he can, because he would not be able to hold it very long, that is, in my mind.

Q That is not what I asked you, Doctor.

A What is it you asked me?

Q I asked you if he could do the work without injury to himself.

A Yes. No, he could not without injury to himself. If you were to limit that to "without injury to the cord lesion," I would say yes, he could do it without injury to the cord lesion; but, without injury to himself, no.

Q Why would it injure him?

A I know what I am talking about. I have run an elevator.

Q Why would it hurt him and not hurt the cord?

A What?

Q Why would it hurt him and not hurt the cord?

(Testimony of Dr. Thomas J. Orbison)

A Because that is the very point I am trying to get at, because he has a psychoneurosis; that man can't concentrate sufficiently; he is not safe, that is the trouble.

Q Doctor, is he—

A He would not be safe. I am speaking seriously. He should not run anything that—now, wait a minute—of that nature where it requires that kind of judgment. Running an elevator, you have got to stop that elevator at a certain place and you have passengers in it, or, if it is a commercial elevator, you have got different kinds of problems on your hands, and he could not stay with it, that is all there is to it. I doubt whether he could even stick out the hours. I am honest in that. He has a decided, to my opinion, he has a decided psychoneurosis and he has an involvement of that vegetative nervous system that he got at the same time as he got his shock to the cord. I did not speak of that, because you did not ask me about it.

Q Then, I haven't asked you yet, either, Doctor.

A But I think I can tell you about that. He shows evidences of shock to that vegetative nervous system that lies right up along—that hugs that cord, this dermographia. I didn't show it to you when he was there, but I noticed how he winced, how he has dermographia structure with his back; for example, if I struck him with not a sharp object but a blunt object over a number of moments, he would look like he had been painted red; all those little arteries that flush up there are controlled entirely by that vegetative nervous system.

Q Doctor, let me ask you some questions again, please, if you are through talking to them over there. Don't

(Testimony of Dr. Thomas J. Orbison)

you as a rule, Doctor, as a nerve specialist, prescribe for your patients that they keep occupied and not be idle?

A Yes, I am kind of—it is one of my hobbies.

Q Answer "Yes" or "No", please.

A I say, "Yes." Now, I would not say "as a rule," because I have no rule upon that subject, but very, very frequently, I have prescribed it, but it is prescribed—wait a minute—that is the very point, it is prescribed in dosage. I do not say to that man, "you go and get a job and you work your ten hours a day." Not for a minute. I prescribe for my patients the kind and quality of the work that they shall do, and kind, if I am doing it for an especial purpose.

Q Did you take an X-ray of this patient, Doctor, when you examined him?

A No, no, I didn't. I don't do that work.

Q Would that have been a help to you in telling how much concussion there was in that backbone?

A No, no, it would not. The X-ray would not show the cord at all scarcely; it would show the bony side. Of course, it would show if there were any fracture there. If there were any fracture there, it might possibly show and might possibly not, but for my purposes it was not necessary.

Q Would this man become worse, Doctor, if he had a job as a janitor?

A Would he become worse?

Q Would it hurt him, yes, injure, or injure his spinal cord?

A It would not hurt him if that job could be regulated according to his abilities to perform. Remember, he tried a job of night watchman, if you will recall the history.

(Testimony of Dr. Thomas J. Orbison)

Q I do not want what he has done; I am asking you a question.

A I say, if—yes, I will answer your question, “Yes,” if he could get a job that was within his limits I think it would be a good thing. I think any kind of work that he could do that would be within his limits to perform would be helpful to him, put it that way.

Q Could he work as a gate man at a railroad crossing without injury to himself?

A You say what?

Q Could he work as a gate man at a railroad crossing without injury to himself?

A Well, he wouldn't hurt himself, but it might be terrible for the other people.

Q It would not make his physical condition—

A (Interrupting.) This man can't concentrate. Don't you see, he can't keep his mind on anything sufficiently. He gets frightfully tired out.

Q How many times did you see him. Doctor?

A I saw him only once. He spent about three hours there.

Q Then, you are telling what he told you, aren't you?

A I am telling you the whole thing.

Q You are telling us what he told you now, aren't you?

A Oh, no. He didn't tell me all this at all, no. Do you want what he told me?

Q No, that is not what I asked you.

A No, you don't want to know what he told me.

A JUROR: Your Honor, may I ask the doctor a question, please?

THE COURT: Yes.

(Testimony of Dr. Thomas J. Orbison)

THE JUROR: In arriving at your conclusion, Doctor, or, I should say, when a doctor of mental cases comes to a conclusion that a person has not got the power to concentrate, isn't it usual to give them some mental test in order to determine that?

A In answer to that question, I would say in this way: That if you believe that that lack of concentration is due to a faulty intelligence, then you can give what we speak of as intelligence tests. Now, if you feel, however, that he is, we will say, up to the adult intelligence level or above, then the complaint is that he can't concentrate, why, you have got to fish back and dig around in his history to see what he has done, what he can't do, according to all the statements you can get. In other words, there is no tape measure.

Q BY THE JUROR: No, but the question that I want to know: You say that he could not do such things as to run an elevator, he would not have the concentrative power to be able to start and stop the elevator and it might be dangerous.

A Yes.

Q BY THE JUROR: Now, aren't there tests that can be given to determine the reaction and the speed of reaction on a man under certain circumstances?

A Yes.

Q BY THE JUROR: Don't you give those tests?

A That can be done, but in a psychoneurosis those tests are not valuable. I will tell you why: They vary; on a good day he may perform very nicely; on a bad day, he may not perform at all, see.

(Testimony of Dr. Thomas J. Orbison)

Q BY THE JUROR: Then, you would have to give tests from time to time over a considerable period to determine?

A Yes, and that is the reason why I say that the history of what he actually has done and not been able to do is really and truly valuable.

Q BY THE JUROR: You haven't given him any test to determine to your own satisfaction whether or not he has the ability to concentrate, such as placing squares around, and those different tests that they very often give?

A No. I think maybe you are speaking of reaction time tests.

Q BY THE JUROR: Yes, I am.

A The normal reaction time in response to a stimulus. His reaction, of course, his response to stimuli should be, the normal is about a ninth of a second, see.

THE JUROR: Yes.

A Now, if for any reason, say, a mental hazard, if we try him for a mental hazard, the "halt and stop," why, you check up how quick they halt, and halt and stop and go, but that is not ability to concentrate; that is a mental hazard. Where there is a lack of ability to concentrate, we have no such tests that are at all accurate. Unfortunately, in that respect, we just haven't got them.

THE JUROR: Thank you very much, Doctor.

Q BY MR. THOMAS: Doctor, you state that such patients vary a great deal from day to day?

A Yes, they do.

Q Some days they are up and some days down, is that right?

(Testimony of Dr. Thomas J. Orbison)

A Even so, yes, and many times that is true.

Q And you drew the conclusion from an examination of this man once, is that right; was he up or down that day?

A Oh, well, his spinal cord is not up or down.

Q You stated you did not examine his spinal cord.

A I examined the objective symptoms.

Q Oh, you examined more of his spinal cord than what you showed to the jury?

A No, I found evidences of organic lesion of the spinal cord. Now, that does not change from day to day.

Q Doctor, did you examine that spinal cord more than what you showed it to the jury?

A Why, yes, I did.

Q What further examination did you make of his spinal cord than what you showed here?

A I went completely over his reflexes; I went over his skin reflexes, his tendon or knee jerks, his plantar reflexes.

Q And do those things all result from that injury in that particular place in the spinal cord? Could they be there from any other injury?

A Oh, yes, this man could have been shot somewhere else or he could have been—he could have had a spinal lesion along the spinal cord somewhere else and still showed this, but he would have had a spinal lesion from some place.

(Testimony of Dr. Thomas J. Orbison)

Q Could he have had that from anything other than a concussion?

A From what, other than a concussion?

Q Yes.

A Oh, yes, anything that would injure the spinal cord and cause a lesion of the spinal cord, but not cause complete severance of the spinal cord would give you this.

Q Do some people have those things that did not have a concussion of the spinal cord?

A Oh, certainly.

MR. THOMAS: That is all.

REDIRECT EXAMINATION

BY MR. SPAULDING:

Q Doctor, in your nervous tests, that is to say, those tests you just described, the knee jerk and those other tests, were they positive for a mental condition or were they negative for a mental condition?

A Oh, they did not—I was not doing that for his mental condition.

Q Well, what did they show, then? What did they show you in the mental tests?

A The tests showed me the neurological condition of his nerves, not the condition of his mind.

Q That showed a nerve condition then, I take it?

A Oh, yes, they are corroborative of the condition of the nervous system and lesion of the spinal cord.

MR. SPAULDING: That is all, Doctor.

MR. THOMAS: That is all.

(Testimony of Dr. H. W. Orr)

DEFENDANT'S CASE

Deposition of

DR. H. W. ORR

was read in evidence in which he testified as follows:

My name is H. W. Orr. I reside in Lincoln Nebraska. I am a surgeon and a graduate of the University of Michigan of the year 1899. I specialized in orthopedic surgery and took post-graduate courses in Chicago with Dr. Ridlon; Bellevue Hospital, New York; General Hospital, Boston, Massachusetts, and I visited clinics in London, Vienna and Italy. I have specialized in orthopedic surgery for thirty years. During the year 1920, I was a member of the Lincoln Clinic, Lincoln, Nebraska. The other members of the clinic were Dr. Hohlen and Dr. Coburn. Ronald Baxter was a patient at the clinic in 1920. At that time, I made a physical examination of him. I have no recollection and the records do not show whether X-ray pictures were taken or not but they probably were. He was given a general physical examination. Refreshing my memory from exhibits 1 and 2 which are photostats of a report containing my signature, Ronald Baxter at that time was suffering from a disability affecting particularly, the lower portion of the trunk and the back and what we call the lumbar and the Lumbo-Sacral region. As I remember it, Ronald Baxter was under observation or treatment about six or eight weeks from which my diagnosis was that he was suffering from a large scar he had in the region I referred to, caused by gunshot wounds inflicted during his military service. I probably saw Ronald Baxter on fifteen or twenty occasions during this

(Testimony of Dr. H. W. Orr)

period. I performed an operation on Ronald Baxter for the removal of the painful scar and for what we call the plastic repair of the area upon which the scar had to be removed. It was this tender, painful scar in this region of the back of which he complained when he came to my office for treatment. That was the only complaint he made as I remember it. I examined Ronald Baxter some time after the operation and found that he had been relieved of a considerable amount of pain and that he had less disability as a result of the removal of the painful scar. At that time, I did not make a formal prognosis but I was of the opinion that he would continue to improve. At that time I was acting in my special capacity with the Veterans Bureau as an Attending Specialist. Under the definition of total and permanent disability, I am of the opinion that he was not so disabled.

CROSS EXAMINATION

The doctor testified:

I have no history of the patient from the date of his injury to the date of my examination, that I now remember. I do not know the history of the patient's disability from the date of my examination to the present date. I have not seen the patient since 1920. I know nothing of the circumstances surrounding the injury other than he gave me a history of having had a gunshot wound in the lower portion of the back. The scar was several inches across in each direction, partially adherent to the bony structure of the lower portion of the back and over a portion of the ilium. The scar was somewhat tender and painful. As near as I can remember, there was no injury to the spinal column. I have no information concerning

(Testimony of Dr. Miles J. Breuer)

the patient's vocational history from the date of his injury to the date of my examination nor from the date of my examination to the present time. I do not know the plaintiff's educational qualifications. I do not know the plaintiff's occupation prior to his injury. I do not know whether or not the plaintiff's ability to readjust himself to his injury would have any bearing on his ability to follow continuously a substantially gainful occupation. I cannot say whether or not the plaintiff's mental qualifications would enter into the question of his ability to follow an occupation. I do not know whether the plaintiff was following an occupation at the time of my examination. At the time I examined him he was having an amount of pain and disability that might have interfered with many kinds of employment.

Deposition of

DR. MILES J. BREUER

was then read in evidence in which the doctor testified as follows:

My name is Miles J. Breuer. I reside in Lincoln, Nebraska, and am a licensed physician; have been such for fifteen years and I am a graduate of Rush Medical College. I have taken post-graduate courses in nervous and mental diseases in Washington University Medical School; internal medicine and diagnosis at the University of Pennsylvania Post Graduate Medical School; and the yearly clinic courses of the Medical College of Physicians every year at a different city each year. My practice is practically limited to diagnosis and internal medicine. In 1919, I was Acting Assistant Surgeon of the United

(Testimony of Dr. Miles J. Breuer)

States Public Health Service taking care of War Risk compensation work at which time I became acquainted with Ronald Baxter. I saw him frequently in my official capacity during the years 1919 and 1920, maybe a dozen times during that period. During that time I made several physical examinations of Ronald Baxter which consisted first of a series of questions; second, an inspection of the body; third, palpation of the body; fourth, laboratory tests; fifth, use of the stethoscope, blood pressure apparatus and other accessory instruments. I also framed the history of his complaints which he states to be a gunshot wound in the sacro region and left wrist; second, stomach complaint, developed in camp Dodge, just before he was discharged. I noticed in my examination, a large scar due to an H. E. wound in the sacro region, a scar on his wrist, a decrease in weight and general physical vigor, and an unstable condition of the nervous system. I sent him to Dr. Orr for the gunshot wound; for the stomach and nervous condition, I advised diet, rest, and medicine. Bearing in mind the definition of total and permanent disability, I am of the opinion that Ronald Baxter was not totally and permanently disabled.

On

CROSS-EXAMINATION

Dr. Breuer testified:

It is not possible for me to state all the complaints because my records were handed in to my successor in the Veterans' work and all I have to go by is my memory and exhibit 3. From these I can say that the complaint he made was a pain in the sacro region whenever he put any

(Testimony of Dr. Miles J. Breuer)

strain on his back and pain in the stomach. My prognosis of his condition was somewhat doubtful as to complete cure, but was good for relief with proper treatment. At that time he was probably unable to follow continuously any gainful occupation but it was my idea that with proper care, he would be put into shape so that he could. The plaintiff was not physically and mentally feasible for vocational training on June 22, 1920, because of the pain in his back and inability to be on his feet sufficiently because of the pain in his stomach and the necessity for restricted diet and rest and the necessity for orthopedic treatment for his back. It is my opinion that the spinal column is an important part of the human anatomy.

On

REDIRECT EXAMINATION

the doctor testified:

From my observation of this man, it appeared to me that he was one of those constitutionally sub-normal people who are not quite fully equipped to fight life's battles independently and who are always looking for opportunities to get outside assistance in their problems and needs. I am of the opinion that he was not totally and permanently disabled at the time of my last examination.

On stipulation of parties, (Government's Exhibit A), a Report of Physical Examination of Enlisted Men Prior to Separation from Service was admitted in evidence with the same force as if the doctor making the examination had testified to it. This report showed that the soldier, Ronald Baxter, claimed disability because of gunshot wound in spine and left hand incurred October 22, 1918,

(Testimony of Dr. Miles J. Breuer)

in the Argonne. Certificate of the examination states that soldier named had been given a careful physical examination. He has a wound consisting of gunshot wound—shrapnel, scar 10 inches long oblique, through lower Lumbar and Sacral region; superficial scar posterior surface of left wrist. The wound or injury is likely to result in death or disability. In line of duty. Disability 30%. Maximum improvement attained.

The Board of Review makes the same finding.

On stipulation of the parties, a statement of Dr. William G. Bouse was submitted in evidence with the understanding that if the doctor were present, he would testify as recited in the statement. This statement recites:

My full name is William G. Bouse. I am a physician residing at Goff, Kansas. I am a graduate of the Kansas Medical College, Topeka, Kansas, Department of Washburn University. I have practiced my profession twenty-four years. I have not specialized except in orthopedic surgery in the United States Army. I signed the Report of Physical Examination dated April 7, 1919, of Ronald Baxter, at which time I examined him. Refreshing my memory from the report of that examination, I am of the opinion that Mr. Baxter was not totally and permanently disabled at that time but was 30% disabled as stated on the report. If Mr. Baxter had proper education, he could do office work. With no education, he could operate an elevator or any other occupation requiring light physical effort. I made no other examinations other than the one dated April 7, 1919.

On stipulation of the parties, report of examination made by Dr. T. M. Leahy, April 21, 1922, was introduced into evidence with the understanding that the doctor would so testify if present.

(Testimony of Dr. T. M. Leahy)

DR. T. M. LEAHY

I made a physical examination of Ronald Baxter which reveals a well developed white male whose vision is normal and pupils re-act to light and accommodation. Hearing is normal. Nose and throat negative. Teeth in good condition. Chest normal in shape, heart negative. Lungs are clear and resonant on percussion. Rough breathing in the area of the large bronchi. No rales. A large scar on the left lumbar region which is adherent. Abdomen negative. No hernia, no varicosities nor ankylosis or deformity. No flat feet. Reflexes normal. Present diagnosis, gunshot wound of back and acute bronchitis. Prognosis of present condition, favorable. Training, feasible. Based on this report, it was stipulated that Dr. Leahy would testify:

My name is Thomas Maurice Leahy. I am a graduate of the University of Illinois Medical College and now live at the National Home. I have practiced my profession nineteen years. I have specialized in tuberculosis two years. Refreshing my memory from my report, I am of the opinion that Ronald Baxter is not permanently and totally disabled. Vocational training was feasible for him at that time which training he was then taking. He could follow any occupation not requiring hard and prolonged physical strain. His general condition was good and he was not otherwise suffering from any serious disability. I do not remember whether or not the patient was under my observation at other times. It would be necessary to refer to records of Chicago District Office U. S. V. B.

(Testimony of Dr. T. J. Dwyer—J. H. Rock)

A statement of

DR. T. J. DWYER,

of Omaha, Nebraska, furnished to the Veterans Bureau by Mr. Baxter on July 5, 1919, was then offered in evidence by the defendant. This statement recited that Dr. Dwyer today examined Ronald Baxter who resides in Omaha, Nebraska. He has a deep scar across the lower lumbar and sacral region as a result of a wound received from a piece of shell in the Argonne. The X-ray shows some bony destruction but not enough to cause any great loss of function. The scar is broad and deep which demonstrates that there is a considerable loss of soft tissue which consists of broad layers of heavy muscle. Mr. Baxter claims to be considerably disabled in occupation which requires constant use of the muscles of his back. From examination, I believe his claims are well founded. I would estimate the disability to be from 25 to 35% for any occupation that would require the active and constant use of the muscles of the back.

J. H. ROCK,

called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

My name is J. H. Rock. I am a physician and surgeon and a graduate of the State University of Iowa Medical College. I have practiced in Los Angeles for five years. I am now employed at the Soldiers' Home in Sawtelle, that is, the hospital adjacent to the Home, furnished for the use of the soldiers from the home that need hospital attention. For a time I had charge of the work in con-

(Testimony of J. H. Rock)

nection with bone injuries. During that time, I examined Ronald Baxter. I have X-rays that were made of him previous to the time that I took charge of the work. I examined him in 1928 and the X-rays were made in 1926. I cannot tell from the X-ray where the injury occurred as there is nothing there to show. From examining the man, I know the location of the injury covers these particular vertebrae (indicating on X-ray). There is nothing on the X-ray that shows a scar on the bone.

Q In your examination of the man did you examine him further than by taking X-rays, as to whether there was any injury to the spinal cord or not?

A Why, he had a complete physical examination, if that is what you mean.

Q Yes. And did that examination cover such things as would determine if his spinal cord had been injured by that scar?

A Yes, sir.

Q Or not?

A Yes, sir.

Q In what manner was that tested, Doctor?

A Do you mean for injury to his spinal cord?

Q Yes.

A Well, it comes under the head of reflexes, his reactions, nervous reactions to various impulses.

Q Was there a complete examination made in that regard?

A Yes.

Q Did that examination show that there was any injury to the spinal cord?

(Testimony of J. H. Rock)

A Yes, sir.

Q Did it show there was anything abnormal in the man as far as that scar or the wound that caused that scar was concerned, outside of the scar itself?

A I don't exactly understand what you mean.

Q Aside from the scar, the wound at the left there where you can see the result of the wound—

A Oh, yes.

Q —did it result in any constitutional injury to the man, such as injury to the back bone or the spinal cord?

A There is some damage to the movements of his back and some restriction of the motion, of course, due to the—

Q What caused that damage, Doctor?

A Well, this injury no doubt involved the bone, and in healing, these tissues healed in spots, in various places to the underlying bone, and that caused a replacement of the elastic structures of his back by some scar tissue; and in that way it limits the range. What I mean, instead of his back going completely forward, it is slightly restricted, the limits of his motion. The same way, applied to the backward motion, or from side to side, he has some degree of limitation of motion.

Q He can't move quite so far as he could move before it happened?

A No.

Q Is that restriction a major handicap, as distinguished from simply a minor effect, loss of motion?

MR. SPAULDING: I submit, if the Court please, the foundation is not sufficiently laid to show that.

THE COURT: Objection sustained to the question as asked in the language used. The doctor can describe what

(Testimony of J. H. Rock)

the effect would be, that is, to what proportion of the full, free movement the man would have, if he can describe it to the jury that way.

Q BY MR. THOMAS: What proportion—

Q BY THE COURT: May I ask you, Doctor, is that restriction due to the external injury, that is, is it external or is it against the bone?

A I testified that this tissue overlying the bone has healed to the bone.

THE COURT: I see.

A (Continuing.) As a matter of adhesion.

Q What is the degree of movement, that is, what is the diminution of movement? Describe it that way to the jury.

A Well, that is a relative matter always in estimating the motion of a man's spine.

Q If he has bent over forward as far as he can go, in this man's case, can you tell?

A I can't tell by inches or degrees how much he is restricted.

Q Nor proportion?

A Well, it is a matter of memory, how much he can move. That is three years, but, as I recall, he did not have a great restriction.

THE COURT: Proceed.

MR. THOMAS: That last question, I did not get the last answer to it.

A JUROR: I did not get the answer, either.

Q BY MR. THOMAS: What do you recall the amount of restriction to be?

A As not a great amount of restriction.

I am of the opinion that this man is not totally and permanently disabled. My opinion is that the man's disability will not improve or get worse. It is stationary in its present stage. I think the only limitation on his work is that he cannot do heavy work.

(Testimony of J. H. Rock)

On

CROSS EXAMINATION,

Dr. Rock testified:

BY MR. SPAULDING:

Q Doctor, handing you what purports to be the medical examination, I will ask you if that is your signature?

A Right.

Q Now, I call your attention to the fact that at the time of your examination you made notations of these various things in your examination report: That he had a "general run-down condition; no pep; weak; work or exercise for an hour required three hours to get over it."

A Excuse me.

Q Required three hours rest to get back on his feet, not exactly in those words. What did you say?

A What did you say at the start?

Q These are apparently statements under the heading of "Present Complaint," and form a part of your Examination Report at the time of your examination.

A Yes, but you understand—

Q I understand what they are, but you made a notation of them, and I will ask you how you explain them when I get through reading them. That is: "General run-down condition; no pep; weak; work or exercise for an hour requires three hours to get over it. Weakness appears to be more in the back and hips; does not rest well at night. Appetite is poor. Pain in lumbar region all the time; this is increased on exercise or being on feet. Also has pain in left leg from being on feet. Has weakness of left hand. Has sharp, daring pains in left side of face. These come and go." Doctor, how do you explain those?

A Patient's statement.

Q True, but isn't a part of your examination, every examination, a part of the complaints made to you; that

(Testimony of J. H. Rock)

is why a patient goes to a doctor, because he notices things the matter with him, isn't that true?

A Yes.

Q That is a very material part of your examination, isn't that so?

A Yes, sir.

Q How do you explain this, Doctor, if they are true?

A I can't explain his statement.

Q Did you make any effort to explain those complaints, as made?

A Why, we examined him.

Q What did you do besides looking at his back?

A Well, the usual procedure of a general physical examination.

Q Just what was it?

A Inspection, that means to look it over.

Q Give him a mental examination, Doctor?

A Sir?

Q Did you give him a mental examination?

A No, sir.

Q You did not. And, isn't it true, Doctor, that the spinal cord has a very close connection with the brain?

A But not mental.

Q Your brain is where your mental abilities or functions come from, isn't it?

A That is right.

Q So then, there is a close connection between the spinal cord and the brain, isn't that true?

A Yes, sir.

Q And you find with those complaints that those complaints are complaints which may be due to a nervous condition or to a nerve injury, aren't they? You expect those kind of complaints from a nerve injury, don't you, pains in the side of the face?

A They are not unusual.

(Testimony of J. H. Rock)

Q Beg pardon?

A They are not unusual. You don't expect them.

Q Still then, you did not make any examinations from a real psychiatric viewpoint to find whether there was something more fundamental there than the spinal scar which you saw, isn't that true?

A He was examined so far as reflexes, and so forth.

Q It does not so show, does it, Doctor?

A Well, he had been examined. That is my report, mostly the orthopedic side or standpoint. A lot of things are shown that are not a matter of record on that paper, when they were done.

Q Now, Doctor, do you or do you not agree with this proposition: That after all, injuries or disabilities affect individuals according to the individual's ability to overcome them, or according to his stamina or his general mental and physical background; that is to say, an injury to one individual might react entirely different upon another individual, isn't that true?

A Yes, sir.

Q So then, we have here, Doctor, an injury, isn't that true?

A Right.

Q And you can't tell positively just what the effect of that injury is going to be on him, can you?

A Well, in certain ways you can; in certain ways you can't.

Q Well, just how can you and how can't you?

A You can tell what degree of impairment it places on him in a physical way.

Q But you can't tell mentally, can you?

A No.

MR. SPAULDING: That is all, Doctor.

MR. THOMAS: That is all, Doctor.

(Testimony of Arthur J. Cassidy)

MR. SPAULDING: I will offer this report in evidence as plaintiff's exhibit.

(Plaintiff's Exhibit 1.)

ARTHUR J. CASSIDY

was then called on behalf of the defendant, and after being first duly sworn, testified as follows:

My name is Arthur J. Cassidy. I work in the Personnel Office of the Soldiers' Home at Sawtelle. I have charge of the records that have been made in the present year including the records of the personnel now on duty. I have, in such capacity, the records of Ronald Baxter showing his employment at the Soldiers' Home. The records show that he was first employed October 8, 1924, as a janitor in which position he worked until December 7, 1924, two months. He was again employed on February 6, 1925, and remained until May 14, 1925, three months and nine days as a janitor. He was next employed August 1, 1925, until November 30, 1925, as a janitor. He was next employed January 24, 1927, to March 31, 1927, as a janitor, when he was promoted to a company sergeant on April 1, 1927, in which position he remained until July 15, 1927. He was then off for forty-five days and returned to work September 1, 1927, as a janitor, and worked continuously until October 31, 1930, approximately three years and two months. He next went to work November 26, 1930, and continued to work until the present time missing only twenty-six days between the two employments. When he returned to work, it was again as a sergeant which position he still occupies. His pay as a janitor in 1924 was at the rate of \$25.00 a month; 1925, at \$24.00 a month; 1927, at \$24.00 a month to the time of his promotion as a sergeant on April 1st. His pay was increased to \$28.00 a month. When he resumed his work in September, 1927, as a janitor, it was at the rate of

(Testimony of E. B. Newcomb)

\$24.00 a month. He came back to work in September, 1927, at the rate of \$24.00 a month up to March 1, 1929, when his pay was raised to \$35.00 a month at which it remained until October 31, 1930. His present position commencing November 26, 1930, was at the rate of \$40.00 a month which he is still receiving. These positions are positions inside the home and are given only to inmates of the home.

E. B. NEWCOMB

was then called as a witness on behalf of the defendant, and testified as follows:

My name is E. B. Newcomb. I reside at the National Home, Sawtelle, where I am employed as Quartermaster. As such Quartermaster, I know the duties of a janitor. The duties of a janitor are cleaning mostly, and running errands. It might, incidentally, include the running of an elevator as each building in the Soldiers' Home has an elevator that has to be run by the personnel of the building. The duties of a sergeant are more or less administrative, watching linens, seeing that the janitors do their duty, enforcing discipline in the company, and assisting the company sergeant in his administrative duties.

On

CROSS EXAMINATION

Captain Newcomb testified:

We try to pick the better type of man to appoint to the position of sergeant.

Defendant rests. Plaintiff rests.

MR. THOMAS: I make a motion for a directed verdict.

THE COURT: Let the record show the motion. Motion denied, exception allowed. Proceed with the argument.

Dated: April....., 1932.

SAMUEL W. McNABB,
United States Attorney,
Clyde Thomas
CLYDE THOMAS,
Assistant United States Attorney,
H C Veit
H. C. VEIT,
Of Counsel.

IT IS HEREBY STIPULATED by and between the parties in the above entitled action that the foregoing is a full, true and correct Bill of Exceptions of the proceedings had in the above entitled action and contains all matters submitted to the court on the trial of the said actor and that the same may be certified by the court as such.

Dated: April 22, 1932.

David Spaulding
DAVID SPAULDING,
Attorney for Plaintiff,
SAMUEL W. McNABB,
United States Attorney,
Clyde Thomas
CLYDE THOMAS,
Assistant United States Attorney,
H. C. Veit
H. C. VEIT, Of Counsel,
Attorneys for Defendant.

The proposed Bill of Exceptions was lodged with the Clerk on the.....day of May, 1932, within the time allowed for filing the Bill of Exceptions, by orders of the United States District Court for the Southern District of California, Central Division, dated November 27, 1931 extending the time within which to file the Bill of Exceptions to February 17, 1932, and the order of February 12 1932, further extending the time to April 1, 1932, and the order of March 30, 1932, further extending the time to April 23, 1932, and the order of April 23, 1932, further extending the time to May 31, 1932, all orders having been made at the February term of said court, and extensions thereof. The attorney for the plaintiff filed his amendments to said proposed Bill of Exceptions within ten days thereafter. The bill was settled by the court on the 7 day of May, 1932, and the amendments allowed by the court have been inserted in the foregoing Bill of Exceptions, which bill is in all respects correct, and containing all of the evidence, and is hereby approved, allowed, and settled and made a part of the record herein.

DATED this 7 day of May, 1932.

Wm P James

United States District Judge.

[Endorsed]: No. 3569-J In the District Court of the United States for the Southern District of California Central Division Ronald Baxter, Plaintiff, vs. United States of America, Defendant. Defendant's Engrossed Bill of Exceptions. Filed May 7-1932 R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

RONALD BAXTER,)
)
Plaintiff,)
)
vs.) No. 3569-J
)
UNITED STATES OF AMERICA,)
)
Defendant.)

ORDER EXTENDING TIME WITHIN WHICH TO SERVE AND FILE BILL OF EXCEPTIONS AND EXTENDING TERM

On Motion of Samuel W. McNabb, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said District, and good cause appearing therefor;

IT IS ORDERED that the time within which the Defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including February 17, 1932.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered; the Term of this Court is hereby extended to and including February 17, 1932.

DATED: November 27, 1931.

Wm. P. James
UNITED STATES DISTRICT JUDGE.

[Endorsed]: No. 3569-J In the District Court of the United States for the Southern District of California Central Division Ronald Baxter, Plaintiff, vs. United States of America, Defendant. Order Extending Time Within Which to Serve and File Bill of Exceptions and Extending Term. Filed Nov 27 1931 R. S. Zimmerman, Clerk By Thomas Madden, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

RONALD BAXTER,)	
)	
Plaintiff,)	
	)	No. 3569-J
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS
AND EXTENDING TERM.

On motion of Samuel W. McNabb, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said District, and good cause appearing therefor;

IT IS ORDERED that the time within which the Defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including April 1, 1932.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including April 1, 1932.

DATED: February 12, 1932.

Wm P James

United States District Judge.

[Endorsed]: No. 3569-J United States District Court
Southern District of California Central Division Ronald
Baxter vs. United States of America Order Extending
Time Within Which to Serve and File Bill of Exceptions
and Extending Term Filed Feb 12 1932 R. S. Zimmerman,
Clerk By B B Hansen Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

RONALD BAXTER,)	
)	
)	
Plaintiff,)	
	)	No. 3569-J
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS
AND EXTENDING TERM.

On motion of Samuel W. McNabb, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said District, and good cause appearing therefor;

IT IS ORDERED that the time within which the Defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including April 23, 1932.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including April 23, 1932.

Dated: this 30 day of March, 1932.

Wm P James
United States District Judge.

[Endorsed]: No. 3569-J In the District Court of the United States for the Southern Dist. of California Central Division Ronald Baxter, Plaintiff, vs. United States of America, Defendant. Order Extending Time Within Which to Serve and File Bill of Exceptions and Extending Term. Filed Mar 30 1932 R. S. Zimmerman, Clerk By Theodore Hocke Deputy Clerk



IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

RONALD BAXTER,)
)
 Plaintiff,)
) No. 3569-J
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Defendant.)

ORDER EXTENDING TIME WITHIN WHICH TO SERVE AND FILE BILL OF EXCEPTIONS AND EXTENDING TERM.

On motion of Samuel W. McNabb, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said District, and good cause appearing therefor;

IT IS ORDERED that the time within which the defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including May 31, 1932.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the

Term in which the Judgment herein was entered, the Term of this this Court is hereby extended to and including May 31, 1932.

DATED: April 23, 1932

Hollzer
Judge

[Endorsed]: No. 3569-J In the District Court of the United States for the So. District of California Central Ronald Baxter vs. United States of America. Order Extending Time Within Which to Serve and File Bill of Exceptions and Extending Term Filed Apr 23 1932 R. S. Zimmerman, Clerk By C. A. Simmons, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

RONALD BAXTER,)	
)	
Plaintiff,)	
	)	No. 3569-J
vs.	)	PETITION
	)	FOR
	)	APPEAL
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES DISTRICT COURT, SOUTH-
ERN DISTRICT OF CALIFORNIA:

COMES NOW the defendant, United States of America, by Samuel W. McNabb, United States Attorney for the Southern District of California, Clyde Thomas,

Assistant United States Attorney for said District, with H. C. Veit, and Madison L. Hill, U. S. Veterans Administration, of counsel, and feeling itself aggrieved by the Judgment entered in this cause, August 1, 1931, and the order denying a new trial entered November 17, 1931, hereby prays that an appeal may be allowed from the United States District Court for the Southern District of California to the United States Circuit Court of Appeals for the Ninth Circuit, and in connection with this petition, petitioners hereby present its Assignment of Errors.

Dated: February 11, 1932.

SAMUEL W. McNABB,
United States Attorney,

Clyde Thomas

CLYDE THOMAS,

Assistant United States Attorney.

H. C. Veit

H. C. VEIT,

Madison L. Hill

MADISON L. HILL,

Of Counsel.

[Endorsed]: No. 3569-J In the District Court of the United States for the So. District of California Central Ronald Baxter vs. United States of America. Petition for Appeal Filed Feb 12 1932 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

RONALD BAXTER,)	
)	
	)	Plaintiff,
)	
	)	No. 3569-J
vs.	)	ASSIGNMENT
	)	OF ERRORS
)	
UNITED STATES OF AMERICA,)	
)	
	)	Defendant.

The defendant, United States of America, by Samuel W. McNabb, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said District, with H. C. Veit and Madison L. Hill, United States Veterans Administration, of counsel, in connection with the Petition for Appeal, files the following Assignment of Errors upon which it will rely upon its prosecution of the appeal in this cause from the Judgment entered herein on August 1, 1931, and the order denying a new trial entered on the 17th day of November, 1931.

I.

That the Court erred in refusing to direct a verdict for the defendant in that the testimony adduced by the plaintiff on the trial was incompetent and irrelevant and not within the issues to be tried and was insufficient to support a verdict for the plaintiff.

II.

That the Court erred in not sustaining defendant's objection to the introduction of testimony which was immaterial and irrelevant and not within the issues to be tried.

III.

That the Court erred in not sustaining defendant's objection to incompetent and irrelevant testimony and not within the issues to be tried in that by the Court's ruling, plaintiff was permitted to submit testimony at variance with the allegations of his complaint.

IV.

That the Court erred in not sustaining defendant's objection to the introduction of incompetent and irrelevant testimony and not within the issues to be tried in that the defendant was taken by surprise and was not prepared to submit testimony in rebuttal thereto.

V.

That the Court erred in denying the motion of defendant for a directed verdict for the defendant on the ground that the preponderance of evidence failed to show a permanent and total disability of the plaintiff.

VI.

That the Court erred in denying the motion of the defendant for a directed verdict in favor of the defendant on the ground that the plaintiff had not sustained the burden of proof and established facts which would justify a judgment being returned in his favor.

VII.

That the Court erred in denying the motion of the defendant for a directed verdict in that the proof adduced by the plaintiff did not prove or tend to establish the cause of action set out in plaintiff's complaint.

VIII.

That the Court erred in denying the motion of defendant for a directed verdict in that the evidence adduced clearly showed that the plaintiff herein was not permanently and totally disabled from following continuously any substantially gainful occupation while the policy of war risk insurance sued upon was in force and effect, but said evidence by a preponderance thereof clearly showed that the plaintiff's disabilities were not total.

IX.

That errors of law occurred in the trial of said cause in that the verdict was contrary to law.

WHEREFORE, defendant demands that the judgment entered herein be reversed and that the District Court for the Southern District of California, Central Division, be ordered to enter its judgment in favor of the defendant, United States of America.

SAMUEL W. McNABB,
United States Attorney,

Clyde Thomas

CLYDE THOMAS,

Assistant United States Attorney,

H. C. Veit

H. C. VEIT,

Madison L. Hill

MADISON L. HILL,

Of Counsel.

[Endorsed]: No. 3569-J In the District Court of the United States for the So. District of California Central Ronald Baxter vs. United States of America Assignment of Errors Filed Feb 12 1932 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

RONALD BAXTER,)
) No. 3569-J
Plaintiff,) ORDER
) ALLOWING
vs.) APPEAL
)
UNITED STATES OF AMERICA,)
)
Defendant.)

IT IS HEREBY ORDERED that the appeal prayed for in the Petition for Appeal filed in the above entitled cause be allowed.

Dated: February 12, 1932.

Wm P James
United States District Judge

[Endorsed]: No. 3569-J In the District Court of the United States for the So. District of California Central Ronald Baxter vs. United States of America. Order Allowing Appeal Filed Feb 12 1932 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

RONALD BAXTER,)	
	)	No. 3569-J
Plaintiff,	)	PRAECIPE
	)	FOR
vs.	)	TRANSCRIPT
	)	OF RECORD.
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

TO THE CLERK OF THE ABOVE COURT:

You are hereby requested to make a Transcript of the Record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such Transcript of Record the following, and no other papers and exhibits, to-wit:

1. Complaint
2. Answer
3. Judgment
4. Motion for New Trial
5. Affidavit of Frank L. Long
6. Affidavit of Guy R. White
7. Minute Order of November 17, 1931
8. Order Extending Time Within Which to Serve and File Bill of Exceptions and Extending Term, dated November 27, 1931.
9. Order Extending Time Within Which to Serve and File Bill of Exceptions and Extending Term, dated February 12, 1932.

10. Order Extending Time Within Which to Serve and File Bill of Exceptions and Extending Term, dated March 30, 1932.
11. Order Extending Time Within Which to Serve and File Bill of Exceptions and Extending Term, dated April 23, 1932.
12. Bill of Exceptions
- 12a Pltfs Ex #1
13. Appeal papers, consisting of:
 - A. Petition for Appeal
 - B. Order Allowing Appeal
 - C. Assignment of Errors
 - D. Praeceptum for Transcript of Record
 - E. Citation on Appeal
 - F. Clerk's certificate to record

Said Transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, on or before the 31st day of May, 1932.

DATED: May 7th, 1932.

SAMUEL W. McNABB,
United States Attorney

Clyde Thomas
CLYDE THOMAS,
Assistant United States Attorney

H C Veit
H. C. VEIT,

Madison L. Hill

MADISON L. HILL, of Counsel

ATTORNEYS FOR DEFENDANT.

Service of the above Praeipe accepted and acknowledged this 7th day of May, 1932.

David Spaulding D H

ATTORNEY FOR PLAINTIFF.

[Endorsed]: No. 3569-J In the District Court of the United States for the Southern District of California Central Division Ronald Baxter, Plaintiff, vs. United States of America, Defendant. Praeipe for Transcript of Record. Filed May 7-1932 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

RONALD BAXTER,)	
)	
)	
Plaintiff,)	
	)	No. 3569-J
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 78 pages, numbered from 1 to 78 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; complaint; answer; verdict; judgment; motion for new trial with affidavits of Guy R. White and Frank L. Long attached; minute order denying motion for a new trial; bill of exceptions; plaintiff's exhibit Number 1; orders extending time to file bill of exceptions and orders extending term of court; petition for appeal; assignment of errors; order allowing appeal and praecipe.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of May in the year of Our Lord One Thousand Nine Hundred and Thirty-two, and of our Independence the One Hundred and Fifty-sixth.

R. S. ZIMMERMAN,

Clerk of the District Court of the
United States of America, in and
for the Southern District of
California.

By

Deputy.